

## **9 FAM 42.83 Notes**

*(TL:VISA-183; 12-18-1998)*

### **9 FAM 42.83 N1 Grounds for Termination of Registration**

*(TL:VISA-66; 9-30-92)*

Registration for an immigrant visa can be terminated only in the circumstances specified in 22 CFR 42.83(a) and (b). [See 9 FAM 42.83 Related Statutory Provisions.]

#### **9 FAM 42.83 N1.1 Failure to Make Timely Application for a Visa**

*(TL:VISA-102; 12-15-94)*

An applicant who has not made application within one year after the Packet 4 or Packet 4(a) letter is mailed is considered not to have made timely application for a visa and registration shall be terminated. The one-year period for calculating the date of immigrant visa registration begins on the date Packet 4 or Packet 4(a) is mailed.

#### **9 FAM 42.83 N1.2 Failure to Present Evidence to Overcome Refusal of Immigrant Visa Under Section INA 221(g)**

*(TL:VISA-66; 9-30-92)*

If an applicant fails to present evidence purporting to overcome the basis for a refusal under INA 221(g) within one-year following the refusal, registration is considered to be terminated.

### **9 FAM 42.83 N2 Cases Terminated for Failure to Respond to Packet 4 or Packet 4(a) Notices**

#### **9 FAM 42.83 N2.1 Applicants Whose Cases Are Subject to Termination Under 203(g)**

*(TL:VISA-66; 9-30-92)*

a. INA 203(g) procedures apply to applicants who are immediate relatives, family-sponsored immigrants and employment-based immigrants who have received notification of the availability of a visa (i.e., who have been sent Packet 4 or Packet 4(a)). [See 9 FAM 42.63 PN10.]

b. INA 203(g) procedures do not, however, apply to applicants in categories for which numbers are unavailable and applicants in programs of limited duration.

## **9 FAM 42.83 N2.2 Extensions of the One-Year Period**

(TL:VISA-95; 10-3-94)

The Department (CA/VO) considers *the end of the one-year period* to be a mandated cut-off date. Should the applicant miss a scheduled interview, that fact alone would not alter the running of the period. The one-year period stops, however, if the applicant, at any time within the one-year period, commencing with the date of the mailing of Packet 4 or Packet 4(a), convinces the consular officer that the initial failure to appear was beyond his or her control. Thus, the mailing of a new letter setting a second appointment date would begin a new one-year period.

## **9 FAM 42.83 N2.3 Post's Action if Applicant Requests Reinstatement of Application**

(TL:VISA-95; 10-3-94)

After the one-year period has ended, if the applicant is able to persuade the consular officer within the next year that the failure to appear within the first year was beyond the applicant's control, the applicant would be entitled to another appointment. Notification of the date of that appointment would also begin the running of another year for the purpose of calculating the possible date of immigrant visa registration.

## **9 FAM 42.83 N3 Cases Terminated for Failure to Pursue Applications Within One Year of INA 221(g) Ineligibility Finding**

### **9 FAM 42.83 N3.1 Unavailability of Documentation or Information to Overcome INA 221(g) Refusal**

(TL:VISA-66; 9-30-92)

An applicant who makes a reasonable assertion that documentation or information is not available within one year of the INA 221(g) refusal would not be subject to INA 203(g) provisions.

### **9 FAM 42.83 N3.2 Extending One-Year Period**

(TL:VISA-66; 9-30-92)

The one-year period is extended each time an applicant presents evidence reasonably purporting to overcome the INA 221(g) ineligibility.

### **9 FAM 42.83 N3.3 Beneficiaries of More Than One Approved Petition**

(TL:VISA-16; 11-7-88)

If an applicant is the beneficiary of more than one approved visa petition, only the petition filed which supported the individual registration resulting in the applicant being called to make application would be terminated. All other petitions would remain valid.

#### **9 FAM 42.83 N3.4 Beneficiaries of New Petition Filed by Same Petitioner**

*(TL:VISA-66; 9-30-92)*

If a new petition is filed for an applicant by the same petitioner, and the original petition was revoked under INA 203(g), the original priority date would not be valid.

#### **9 FAM 42.83 N4 “Following-to-Join” Applicants**

*(TL:VISA-66; 9-30-92)*

Applicants who are “following to join” the principal applicant are not subject to the provisions of INA 203(g).

#### **9 FAM 42.83 N5 Notification of Change of Address**

*(TL:VISA-16; 11-7-88)*

The burden is on the applicant to provide the post with a current address. Failure of an applicant to receive the notice of termination due to a change of address of which the post was not notified, will not be considered as a “reason beyond the applicant’s control” for not pursuing the application.

#### **9 FAM 42.83 N6 Requests for Advisory Opinions**

*(TL:VISA-66; 9-30-92)*

There have been very few advisory opinion requests on INA 203(g) sent to the Department and, therefore, the Department has little basis for establishing precedence. Posts are, therefore, encouraged to submit requests for advisory opinions whenever they are in doubt as to whether INA 203(g) should be applied. Slug advisory opinion requests for CA/VO/L/A.